



March 27, 2000

Mr. Thomas W. Deaton
Flournoy & Deaton, L.L.P.
P.O. Box 1546
Lufkin, Texas 75901

OR2000-1190

Dear Mr. Deaton:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 133313.

The Deep East Texas Workforce Development Board (the "board"), which you represent, received a request for information relating to a procurement for management and operation of the Deep East Texas Workforce Centers under Request for Proposal No. 00-08. The request encompasses copies of proposals submitted by the Deep East Texas Council of Governments ("DETCOG"), Lockheed Martin IMS, and Resource Consultants, Inc., review instruments, and related materials. You have submitted the requested information for our review. You claim that it is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect the interests of a governmental body in a situation such as competitive bidding or a request for proposals in which the governmental body may wish to withhold information in order to obtain more favorable offers. *See Open Records Decision No. 592 at 8 (1991)*. Section 552.104 is generally invoked to protect the integrity of the competitive bidding process and the advantages it affords to a governmental body. *See Open Records Decision No. 541 at 4-5 (1990)*. Section 552.104 excepts information from public disclosure if it is demonstrated that release of that information would create the potential

for specific harm to the governmental body's interests in a particular competitive situation. *Id.* at 4. A general allegation or remote possibility of harm is not sufficient to sustain a claim under section 552.104. *Id.* Section 552.104 does not except bid information from public disclosure after the bidding is concluded and the contract has been awarded. *Id.* at 5.

In support of the board's claim under section 552.104, you assert that "[t]he information made the subject of the request is the subject of competitive bidding and may in some respects be used to give the requestor a competitive edge." You offer no further explanation as to how release of the requested information would harm the board's interests. The materials that you submitted reflect that the requestor was one of the bidders under the request for proposal to which the requested information pertains. The submitted materials also indicate, however, that the bidding process has been concluded. On the basis of your representations and our review of the submitted information, we conclude that the requested information is not excepted from public disclosure under section 552.104.

You also state that the requested information may be excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information for which it is demonstrated, based on specific factual evidence, that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *See Gov't Code § 552.110(a), (b); Open Records Decision No. 552 at 2 (1990).* Section 552.305 of the Government Code provides that if release of a private party's proprietary information may be subject to exception under section 552.110, a governmental body must make a good faith effort to notify that party of its right to submit reasons why such information should be withheld from disclosure. *See Gov't Code § 552.305(d); Open Records Decision No. 542 at 2-3 (1990)* (determining that statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). You inform this office that the board provided the notice required by section 552.305(d) to DETCOG, Lockheed Martin IMS, and Resource Consultants. Each of the parties to which the board provided notice under section 552.305 had ten business days in which to submit to this office that party's arguments, if any, as to why requested information relating to that party represents or contains information protected by section 552.110. *See Gov't Code § 552.305(d)(2)(B).* None of the three parties timely responded. Consequently, none of the information in question is excepted from disclosure under section 552.110.

In summary, the submitted information is not excepted from disclosure under either section 552.104 or section 552.110. Accordingly, it must be released to the requestor in its entirety. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

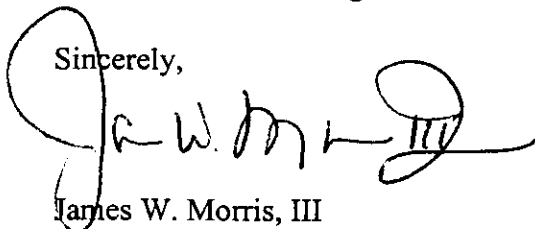
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a large, stylized initial 'J' on the left.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/nc

Ref: ID# 133313

Encl. Submitted documents

cc: Mr. Don Shepard
Archetype, Inc.
P.O. Box 202633
Austin, Texas 78720-2633
(w/o enclosures)